

**TEXAS DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
QA Systems**

This VOLUME PRICING CONTRACT is entered into as of December 21, 2001 between the State of Texas, acting by and through the Department of Information Resources (DIR) with its principal place of business at 300 West 15th Street, Austin, Texas 78701, on behalf of state agencies as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, §61.003) and local governments as defined in §791.003, Texas Government Code, and QA Systems (Vendor) with its principal place of business at 6620 Manor Road, Austin, Texas 78723.

The parties agree as follows:

I. PURPOSE OF THIS CONTRACT

Vendor shall provide information resources technologies **only** as specified in Contract Posting Document DIR-TMP-02-016, attached as Exhibit "A", to customers in accordance with the terms of this contract. Vendor shall provide information resources technologies only upon the issuance and acceptance by vendor of valid purchase orders. A customer may purchase any quantity of product or service available from vendor at the prices negotiated by the DIR ("DIR Discounted Price"). For large orders, vendor and a customer may negotiate quantity price discounts above the DIR pricing discounts for a purchase order. From time to time, vendor may offer other discounts on particular information resources technologies for qualifying customer (e.g., announced promotion prices, educational discount prices, or similar discount pricing).

Vendor is required to be a Certified Dell Reseller and maintain this certification for the term of the contract.

II. TERM OF CONTRACT

This contract shall begin December 21, 2001 and end August 31, 2003 unless extended at the option of DIR, two optional one-year renewals, through August 31, 2005.

III. ORDER OF PRECEDENCE

Each purchase order under this contract that is accepted by Vendor will be subject to this contract. Purchase transactions between the parties shall be governed by the terms and conditions of this contract and any exhibits to this contract. In the event of a conflict between a term of this contract (or an exhibit to this contract) or purchase order issued by a customer, the contract term shall control. No additional term and condition of a purchase order issued by a Customer can weaken a term or condition of this contract.

IV. DEFINITIONS

- a) **"Contract Administrator"** refers to the individual appointed by the DIR to administer this contract on behalf of the State of Texas and the authorized Customers.

- b) **"Announced Promotion Prices"** are prices offered nationally to specific categories of customer for defined time periods under defined terms and conditions.
- c) **"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only.
- d) **"Large Order Negotiated Price"** means the price negotiated between vendor and a particular customer under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement between manufacturer, vendor, and the customer. Large order negotiated prices shall apply only to those items which meet the applicable additional terms and conditions (*e.g.*, order quantity, time limitation, product configuration) negotiated by the parties.
- e) **"Machine"** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "machine" includes a vendor machine and any non-vendor machine (including other equipment) that vendor may provide to customer.
- f) **"Customer"** means any Texas State agency as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in §61.003, Texas Education Code) and local governments as defined in §791.003, Texas Government Code.
- g) **"Manufacturer"** refers to Dell Computer Corporation.
- h) **"Information Resources Technology (Technologies)"** is defined in Texas Government Code §2054.003.
- i) **"Purchase Order"** means an electronic or paper document issued by a customer which directs vendor to deliver information resources technologies pursuant to this contract.
- j) **"Specification"** is a document that provides information specific to an item of information resources technology.
- k) **"Straight Shipment"** refers to information resources technologies that are delivered directly to the Customer from manufacturer. Vendor is only required to accept the purchase order from Customer, place the customer order with manufacturer, and invoice the purchase order to the Customer.
- l) **"Services"** means any type of work that a Customer may require from vendor for a purchase, above and beyond a straight shipment from Dell. *ie.* installation, de-installation, integration services, warehousing product, etc.

V. QUANTITY GUARANTEES

This contract is not exclusive. Customers may obtain computer information resources technologies from other sources during the contract term. DIR makes no express or implied warranties whatsoever that any particular number of purchase orders will be issued or that any particular quantity or dollar amount of information resources technologies will be procured. DIR is prevented by law from selling information resources technologies to other than governmental entities as defined in Texas Government Code, §2251.001 and Texas Education Code, §61.003.

VI. PAYMENT PROVISIONS

All payments for information resources technologies purchased under this contract, and any provision of acceptance of such information resources technologies, shall be made to vendor by the customer. Invoices shall be submitted by Vendor directly to the Customer. Customer will endeavor to pay within thirty (30) days of receipt of all accurate, timely and complete invoices from Vendor.

VII. PRICING AND PRODUCTS

- a) The price to the Customer under this contract shall be based on Vendor's standard contracted pricing with manufacturer. Manufacturer has the discretion to offer pricing discounts to the Vendor beyond the standard contracted price if manufacturer opportunity warrants. The price to the Customer under this contract shall be the lowest price offered by Vendor to any Texas governmental entity for the same product or service. Vendor shall immediately pass price reductions received from its suppliers on to the DIR Customers purchasing under the Contract. The Vendor is in violation of the Contract if it is found selling the same product or service at a lower price to an eligible Customer outside of this contract. The violation may result in the Contract being terminated.
- b) All products which Vendor is authorized by manufacturer to resell, manufacturer branded equipment and as referenced in section I, shall be made available to the Customer at Vendor's contracted price from manufacturer plus the follow fees:
 - 1) an administrative fee to DIR to defray its costs of negotiating, executing and administering this Contract, currently 1.00 % of each sale made.
 - 2) a 2.80 % maximum markup fee by Vendor on all straight shipments from manufacturer to customer for purchases up to \$50,000.00. Vendor may reduce markup at their discretion.
 - 3) for purchases over \$50,000.00 and for any purchase by Customer that requires Vendor to perform services, the markup fee by Vendor will be negotiable.
- c) Vendor agrees to maintain DIR product prices in accordance with the terms of this contract. Vendor may change the price of any product or service at any time, base upon list price changes, but Vendor markup percentages at a maximum shall remain consistent during the agreed period. Payment under this contract shall not foreclose the right of the Customer to recover wrongful payments.
- d) DIR may change its administrative fee upward or downward during the term of this contract upon written notice to Vendor. Any change in administrative fee shall be passed on to the Customer.
- e) The total price to the Customer under this contract shall include any standard manufacturer shipping and handling fees, or shall be listed separately for the customer. No additional administrative fees shall be charged to the Customer for standard manufacturer shipping and handling. If the Customer requests expedited delivery or a shipping method that is not standard to manufacturer, Customer will be responsible for any additional fees in order to accommodate.

- f) If Vendor is contacted by, or contacts, a Texas State Agency, Institution of Higher Education, or unit of Local Government concerning buying information resources technologies that are made available under this contract, Vendor shall make the potential Customer aware of this contract and the ability of the potential Customer to buy hereunder.
- g) Vendor may make product model changes, add new products, product upgrades or services at any time and the pricing for the same shall incorporate comparable vendor markup levels at a maximum provided herein.

VIII. TERMINATION

The following provisions are applicable in the event this contract is terminated.

- a) **Termination for Convenience**

At any time, either party may terminate this contract, in whole or in part, by giving the other party (30) days written notice.

- b) **Customer's Rights**

In the event the contract expires or is terminated for any reason, a Customer shall retain its rights under the purchase order issued with respect to all information resources technologies ordered and accepted prior to the effective termination date.

- c) **Vendor's Rights**

In the event the contract expires or is terminated for any reason, a Customer shall pay vendor all amounts due for information resources technologies ordered prior to the effective termination date and ultimately accepted.

IX. ADMINISTRATIVE FEE

The administrative fee shall be included in the charges for the information resources technologies set forth on any order form and/or quote to Customer. This administrative fee shall not be broken out as a separate line item. The Vendor's obligation to pay such amounts shall be suspended to the extent that its payment of collection violates any state or federal laws.

Vendor will pay DIR, on a monthly basis, the fee based on a percentage of the dollar value of vendor purchases made by customers pursuant to this contract. Payment is due based on sales, net of returns and credits, to be figured at the time of invoice to Customer. Vendor will provide payment to DIR fifteen (15) business days after the end of each month. For example, if Customer is invoiced on December 10th, payment to DIR for the sale is due January 15th. The administrative fee is currently based on 1.00 % of each sale made.

X. QUOTATIONS, SHIPPING, AND RETURN POLICIES

Vendor will adhere to their then-currently published policies concerning quotations. Shipping charges and return policies will adhere to manufacturer's then-currently published policies. Policies for Customer will not be more restrictive nor more costly than those policies for any other like individual, corporation, partnership, governmental entity, or other legal entity for the same product or service.

XI. IMPRACTICALITY OF PERFORMANCE

A party shall be excused from performance under this contract for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. A customer may terminate a purchase order if it is determined by the customer that vendor will not be able to deliver product or services in a timely manner to meet the business needs of the customer.

XII. LEASING PROVISION

The parties to this contract may agree to provisions that allow leasing of information technology equipment in addition to purchase sales.

XIII. RECORDS AND AUDIT

- a) Vendor shall maintain adequate records to establish compliance with this contract until the later of a period of four (4) years after termination of this contract or until full, final and unappealable resolution of all audit or litigation issues that arise under this contract. Such records shall include documentation of the following: date each customer placed order with vendor, identification of the ordering customer, the product model, quantity ordered, the price quoted to the customer for such order, the customer purchase order number, the order date to manufacturer, ship date, MSRP, shipping address, the invoice sent to the customer relating to the order, the record of customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this contract, and such other documentation as DIR may request.
- b) Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this contract to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by vendor without charge. DIR shall provide vendor ten (10) business days' notice prior to inspecting, auditing and/or copying vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the vendor's books and records shall be available to DIR staff and designees as needed to explain the books and records to the extent necessary for the audit or inspection to be performed. Vendor shall provide adequate office space to DIR staff during the performance of an audit.

- c) If any inspection or audit performed hereunder reveals an aggregate overcharge to customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such audit or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the audit or inspection, shall be reimbursed to DIR within thirty days from receipt of an invoice from DIR reflecting the cost of the audit or inspection.
- d) In the event of a discrepancy between the amount determined by the Texas Comptroller of Public Accounts as having been paid to vendor on behalf of a customer and the amount vendor calculates DIR's administrative fee provided for such customer, the amount reflected by the Comptroller of Public Accounts shall be presumed correct unless vendor can demonstrate to DIR's satisfaction that vendor's calculation of DIR's administrative fee is correct.

XIV. USE OF SUBCONTRACTORS

If Vendor uses any subcontractors, Vendor shall obtain advance written authorization from the DIR contract manager. Vendor shall satisfy DIR that all reasonable effort has been made to comply with the DIR HUB Subcontractor Plan.

A customer may choose to contract for configuration, installation, training, warranty or maintenance services separately through alternate DIR contracts.

XV. AMENDMENTS

The contract shall be amended only by written instrument executed by the parties.

XVI. SCOPE OF CONTRACT

This contract replaces all of the agreements of the parties concerning the subject matter of this contract. No prior contract, verbal or otherwise, of the parties or their agents shall be valid or enforceable. This contract includes the requirements of the request for offer in Exhibit A.

XVII. INVALID TERM AND CONDITION

If any term or condition of this contract shall be held invalid or unenforceable, the remainder of this contract shall not be affected and shall be valid and enforceable.

XVIII. ENFORCEMENT OF CONTRACT

A party's failure to require strict performance of any provision of this contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this contract shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights. For disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used.

This contract shall be governed by the laws of the State of Texas. Venue for any dispute is in the District Court of Travis County, Texas.

XIX. WEB SITE MAINTENANCE

Vendor agrees to work with the DIR Contract Administrator in keeping updated Vendor information listed on the DIR Web Site. Information from the vendor is to include vendor representative contact name, phone number, fax number, email address, QISV number, and address of company for customer to submit orders. Vendor web-site URL must also be included. Information on how the customer will request quotes, place orders, etc. must be maintained on the vendor's web-site.

XX. EQUAL OPPORTUNITY COMPLIANCE

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by vendor under this contract. If vendor is found to be not in compliance with these requirements during the life of this contract, vendor agrees to take appropriate steps to correct these deficiencies.

XXI. CHANGE IN VENDOR REPRESENTATIVES

Vendor shall appoint a primary representative to work with the contract administrator to maintain, support, and market this contract. DIR reserves the right to require a change in vendor's then-current primary representative if the assigned representative is not, in the opinion of the DIR, serving the needs of the State of Texas and the customers adequately. The DIR contract administrator will escalate to Vendor management any unresolved issues, before a change in Vendor's then-current representative is requested by DIR.

XXII. CONFIDENTIALITY

Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will not only comply with the Public Information Act, and also with all opinions of the Texas Attorney Generals' office concerning this Act.

Under the terms of this contract, DIR may provide vendor with information related to DIR customers. Vendor shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that vendor shall not re-sell or otherwise distribute or release to any party in any manner DIR customer information.

XXIII. SITE PREPARATION

A customer shall prepare and maintain its site in accordance with written instructions furnished by vendor prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

XXIV. CONTRACT ADMINISTRATOR

The DIR shall appoint a contract administrator whose duties shall include but not be limited to the following:

- A. Facilitate dispute resolution between the vendor and customer. Unresolved disputes shall be presented to DIR for resolution.
- B. The administrator shall advise the DIR regarding vendor's performance under the terms and conditions of the contract.
- C. Receive and approve monthly contract utilization reports and the administration fee payments.
- D. Periodically verify the Product prices conform with vendor's volume price guarantees.

XXV. SURVIVAL

Warranty and service agreements that were entered into between vendor and a customer under the terms and conditions of this contract shall survive the termination of this contract.

XXVI. SUCCESSION

This contract shall be entered into and be binding upon the successors of the parties. DIR must approve assignment of this contract prior to any transfer.

XXVII. NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To DIR:

Patrick W. Hogan, Director of Business Operations
Department of Information Resources
P.O. Box 13564
Austin, Texas 78711

To QA Systems:

Marcos Gutierrez, President
QA Systems
6620 Manor Road
Austin, Texas 78723

Either party may change its representative or address above by written notice.

XXVIII. ADMINISTRATION REPORTING AND FEES

Vendor agrees to provide monthly contract utilization reports to the contract administrator in accordance with the following schedule. The reports will be due fifteen (15) business days after the end of each month.

- a) A monthly report shall state the sales under the contract for the period subtotaled by customer name. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated administrative fee.
- b) A detail sales report will be issued monthly that includes no less than each customer, order date, ship date, product model, quantity, customer price, extended price, customer purchase order number, physical shipping address, city, zip code, and other information as required by DIR.
- c) Reports as required by DIR that will reflect the amount of work being subcontracted to historically underutilized businesses, as defined by Texas State law.

All reports are to be submitted electronically as defined by DIR.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the contract or termination of the contract for cause. Vendor's liability for any breach of this Section shall not under any circumstances exceed the amount of administrative fees owed to DIR by vendor.

XXIX. VENDOR CERTIFICATIONS

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this contract; and (v) during the term of this contract, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

XXX. DIR LOGO

Vendor may use the DIR logo in the promotion of this contract to customers with the following stipulations:

- a) The logo may not be modified in any way;

- b) When displayed, the size of the DIR logo must be equal to or smaller than the vendor logo;
- c) The sole use of the DIR logo will be to communicate the availability of information resources technologies available under this contract to customers; and
- d) Any other use of the DIR logo requires prior written permission from DIR.

XXXI. TECHNOLOGY ACCESS, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE

The Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under this contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

XXXII. COMMODITY SOFTWARE

Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, Vendor agrees to coordinate all commodity software sales made coincident to this agreement through existing DIR contracts if available. Vendor represents that it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, any commodity software to other state agencies within the State of Texas unless DIR provides notification that DIR has granted a waiver to that state agency to purchase the commodity software outside of then current commodity software list. This section does not apply to institutions of higher education.

XXXIII. PREFERENCE TO TEXAS PRODUCTS AND SERVICES

Vendor agrees to comply with Sections 2155.444 and 2155.4441, Texas Government Code.

XXXIV. TRAINING AND TRADE SHOW PARTICIPATION

The Vendor may be required to provide product overview training to DIR at no cost. The training will be held within the Austin area at times mutually acceptable to DIR and Vendor.

Vendor understands and agrees that it must participate fully by providing a manned booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Vendor's expense. Vendor agrees to display the DIR logo at all trade shows directed toward entities that qualify as DIR Customers.

XXXV. ABILITY TO CONDUCT BUSINESS IN TEXAS

The Vendor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.

Vendor acknowledges and agrees that, to the extent Vendor owes any debt or delinquent taxes to the State of Texas, in accordance with §403.055(h), Texas Government Code, any payments Vendor is owed under this contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Vendor owes the State of Texas until the debt or delinquent taxes are paid in full.

Vendor is a "Qualified Information Systems vendor" as defined in §2157.001, Texas Government Code. All information resources technologies offered to Customer under this contract are listed in Vendor's catalogue on file with the General Services Commission.

XXXVI. BINDING CONTRACT


This contract has been duly authorized, executed and delivered by vendor and constitutes the valid, legal and binding agreement of vendor, enforceable in accordance with its terms.

XXXVII. SUIT OR PENDING PROCEEDINGS

To the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the vendor will have a material adverse effect on the ability of the vendor to fulfill its obligations under the contract.

IN WITNESS WHEREOF, this contract has been executed by the duly authorized representatives of the parties.

QA Systems

By: 
Name: Marcos Gutierrez
Title: President
Date: 12/21/01

**THE STATE OF TEXAS, acting by and
through the DEPARTMENT of
INFORMATION RESOURCES**

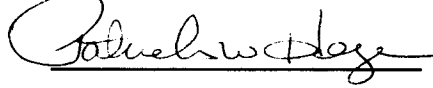

By: 
Name: Patrick W. Hogan
Title: Director of Business Operations
Legal: 
Date: 12-21-01

Exhibit A

http://esb.state.tx.us/1500/bid_showmain.html 507

Texas Building And Procurement Commission Electronic State Business Daily

State Procurement Section of Texas Marketplace

View Newest Postings

DELL CERTIFIED RESELLER FOR DELL BRANDED EQUIPMENT

Agency: DEPARTMENT OF INFORMATION RESOURCES

Open Date: 10/23/01 03:00 PM

Agency Requisition Number: DIR-TMP-02-016

Previous Price Paid: N/A

Deliver Date: 10/24/01

Bid type: 14 Days for entire bid or proposal solicitation package

GSC Classifications:

Class-Item: 204 - 53

Class-Item: 204 - 54

Class-Item: 204 - 55

Contact Information:

Contact Name:

Michele McCune

Email:

michele.mccune@dir.state.tx.us

Address:

300 W. 15th Suite 1300 78701

P. O. Box 13564

Austin, TX 78711-3564

Phone:

(512) 936-2650

Fax:

(512) 463-3276

NOTE: You will need to download all of the following files below for complete bid specifications

Help: Right Click to and choose "save file as" or "save target as" to your computer. [More Help](#)

Must be QISV - QISV.txt size: 708 (in bytes) **Format:** (ASCII Plain Text)

Terms & Cond. - PURT&C02.doc size: 40960 (in bytes) **Format:** Word for Windows 97

-Bid Package 1 size: 423936 (in bytes) **Type:** Bid Specification **Format:** Word for Windows 6.0 - 95

-Bid Package 2 size: 87552 (in bytes) **Type:** Bid Specification **Format:** Word for Windows 6.0 - 95

-Bid Package 3 size: 964608 (in bytes) **Type:** Bid Specification **Format:** Word for Windows 6.0 - 95

-Bid Package 4 size: 46080 (in bytes) **Type:** Bid Specification **Format:** Excel for Windows 97

Details:

DIR is re-bidding for the above for Fiscal Year 2002 (FY02) and Fiscal Year 2003 (FY03).

Contract(s) will end August 31, 2003 with an option to renew. Current vendors providing product lines as well as other approved Qualified Information Systems Vendors (QISVs) are encouraged to respond to the Invitation to Negotiate (ITN).

Issued Date: 2001-10-10 14:27:36 Updated date: 2001-10-10 14:27:36



DEPARTMENT OF INFORMATION RESOURCES

P.O. Box 13564 ♦ Austin, TX 78711-3564 ♦ www.dir.state.tx.us

Tel: (512) 475-4700 ♦ Fax: (512) 475-4759

CAROLYN PURCELL
Chief Information Officer
State of Texas

October 10, 2001

Re: Dell Certified Reseller for Dell Branded Equipment

— ♦ —
DIR BOARD OF
DIRECTORS

Dear Qualified Information Systems Vendor:

ROLF R. HABERECHT
CHAIR

DIR is re-bidding for the above for Fiscal Year 2002 (FY02) and Fiscal Year 2003 (FY03). Contract(s) will end August 31, 2003 with an option to renew. Current vendors providing product lines as well as other approved Qualified Information Systems Vendors (QISVs) are encouraged to respond to the Invitation to Negotiate (ITN). For information on how to become QISV qualified please visit <http://www.gsc.state.tx.us/stpurch/qisv.html>. Historically Underutilized Businesses (HUBs) are strongly encouraged to respond. Vendor must be a Dell Certified Reseller or in the process of becoming certified in order to be awarded a contract. For information on how to become a Dell Certified Reseller please contact Belvis Jimmerson, Dell Contract Specialist at belvis_jimmerson@dell.com.

JENNIFER
ANDERSON, Ed.D.

WALTER "TREY"
BRADLEY III

MARIO J.
GONZALEZ, Ph.D.

CAROLE S.
GREISDORF

JAMES NELSON
Ex Officio

HARRY H.
RICHARDSON

ANDREW SANSOM
Ex Officio

Complete vendor responses should include the following (all of which are included with this posting):

- Completed vendor questionnaire with any attachments requested
- Completed product pricing spreadsheet
- Completed HUB subcontracting forms
- Objections to any Volume Pricing Contract provisions with proposed alternative language :

WAYNE SCOTT
Ex Officio

DIR has determined that Historically Underutilized Businesses (HUBs) subcontracting opportunities are probable. Any QISV submitting responses to this ITN shall adhere to the HUB Subcontracting Plan, a copy of which, along with all attachments, is included with the posting information. Vendor's submitted HUB Subcontracting Plan will become a provision of the contract. Failure to comply with the requirements of the HUB Subcontracting Plan will result in rejection of submitted proposal.

The contract included with this posting is considered to be a part of the proposal being submitted. Contract will not be awarded unless a vendor responds fully to the ITN, signs the contract attached to the marketplace posting, stating any provisions to the contract with proposed alternative language.

DIR will review all proposals submitted and select vendors for further

negotiations based on "best value" as described in State of Texas purchasing law. The definition of best value is described on the Texas General Services WEB site, URL <http://www.gsc.state.tx.us/stpurch/21bestvl.html>. Vendors will be selected based on the lowest price as well as other indicators that determine best value. Other indicators include, but are not limited to, vendor performance, experience, financial stability, ability to provide quotes in a timely manner, and pre-sale vendor technical support.

Three copies of the proposal must be submitted to Michele McCune's attention at DIR no later than 3:00 P.M. October 23, 2001. Michele McCune is available to answer any questions you may have. She can be contacted at (512) 936-2650 or by e-mail at michele.mccune@dir.state.tx.us. Responses may be faxed, mailed, or hand delivered to the below:

Michele McCune, DIR Contract Manager
300 West 15th, Suite 1300
Austin, TX 78701

Fax number: 512-463-3276

Sincerely,

Patrick W. Hogan
Director, Business Operations Division

Vendor Information

All Vendors submitted responses to this bid from DIR are **required** to complete the following information and submit back to DIR along with the other requested materials. Failure to include all requested information will result in your response being disqualified.

1. Indicate whether or not your company is QISV certified from the State of Texas General Services Commission.
(please check one) _____ Yes _____ No

QISV # _____
2. Indicate whether or not your company is a certified Historically Underutilized Business (HUB) with the State of Texas. Please provide as an attachment your company's HUB Certification letter.
(please check one) _____ Yes _____ No
3. Please provide the year your company was established.

4. Provide as an attachment your company's financial report for your most recently completed fiscal year.
5. Vendor must be a certified Dell reseller. Please provide an attachment from Dell stating as such. Please list below the Dell segments that you are authorized to sell to, such as; State and Local, Higher Ed., K-12, etc. Please list how long your company has been doing business with Dell.

6. Describe your company's ability to provide **value-added services** such as; factory-authorized warranty and maintenance, factory trained technical support, product training, etc.

7. The number of full time employees employed by your company.

8. Indicate the number of employees that will be dedicated to this account.
Describe the roles of these employees.

9. The number of employees that are factory trained to support the products offered
(show how many are focused on sales and how many are focused on service).

10. List the address and city of your company's headquarters.

11. List the address and city of the location that will be responsible for servicing this
account.

15. List the Primary Contact Person if awarded a contract; name, phone, fax, and
email.

12. Provide three current customer references. Include all requested information.

Current Reference 1:

Name of Company: _____

Name of Contact: _____

Title of Contact: _____

Telephone Number of Contact: _____

Current Reference 2:

Name of Company: _____

Name of Contact: _____

Title of Contact: _____

Telephone Number of Contact: _____

Current Reference 3:

Name of Company: _____

Name of Contact: _____
Title of Contact: _____
Telephone Number of Contact: _____

13. Provide two references for customers that have discontinued doing business with your company in the past two years. Include all requested information.

Discontinued Reference 1:

Name of Company: _____
Name of Contact: _____
Title of Contact: _____
Telephone Number of Contact: _____

Discontinued Reference 2:

Name of Company: _____
Name of Contact: _____
Title of Contact: _____
Telephone Number of Contact: _____

Dell Product Pricing Sheet

Configurations	Cost of Configuration	Reseller's Markup on Purchases of up to \$50,000.00. Straight Shipment Only, No services.
# 1	\$1,952.80	
Latitude C800 Notebook, Dell Quote # 67552544		
Latitude C800,850mHz,Pentium III,15.0in TFT,ENGLISH (220-3644)		
128MB, 1 Dimm, SDRAM , (311-1724)		
16MB,M4 Video Card,for Dell Latitude C800 Notebooks, (320-3024)		
10GB Hard Drive,9.5MM for DellLatitude C800/C810 Notebooks, (340-6335)		
Windows 2000,Service Pack 1, English, (420-6123)		
Internal Actiontec Mini-PCI Modem , (313-0657)		
INTERNAL 24X CDROM,for Dell Latitude C800/C810 Notebooks, (313-0658)		
LI-ION Spare Battery,for Dell Latitude C800/C810 Notebooks (312-0521)		
Classic Nylon Carrying Case ,Packaged with System (310-5271)		
Type 3 Contract - Next Business Day Parts & Labor On-Site Response Initial Year (902-3810)		
Type 3 Contract - Next Business Day Parts & Labor On-Site Response 2YR Extended (902-3812)		
# 2	\$1,709.01	
Workstation 340 Small Desktop, Dell Quote # 67552690		
1.50GHz/400MHz Front Side Bus,P4,Dell Precision 340 Small Desktop (220-8313)		
256MB,PC800 @ 400MHz,ECC, 2X128,RIMM,Rambus Memory,(311-2401)		
Enhanced Quietkey Keyboard, PS/2,3 Hot Keys,Dell PrecisionX30 (310-1420)		
Dell UltraScan,P992,19 inch Monitor w/17.97 inch Viewable Image Size,Gray,(320-1522)		
nVidia,Quadro2 EX,32MB,VGA, Graphics Card,Dell Precision 340 Small Desktop (320-1532)		
20GB Hard Drive,IDE(ATA-100) #1,1inch,7.2 RPM,Dell Precision 340,(340-8561)		
3.5",1.44MB,Floppy Drive Dell Precision 530, Factory Install (340-3736)		
WINDOWS 2000 Pro,Service Pack 2,NTFS,Dell Precision, (420-1536)		
Logitech Club,3-Button,No Scroll,PS/2 Mouse,Dell Precision (310-8301)		
20/48X,IDE,CD-ROM,Dell Midnight Gray Precision 530/340,(313-1304)		
harmon kardon 19.5,Speakers, for Dell Precision X30 (313-5484)		
Chassis Stand,Small Desktop, Gray,Dell Precision 340 (310-6535)		
Type 3 Contract - Next Business Day Parts & Labor On-Site Response 2YR Extended (902-3512)		
Type 3 Contract - Next Business Day Parts & Labor On-Site Response Initial Year (902-4630)		
Standard On-Site Installation Declined (900-9988)		
Mouse Pad (310-0007)		

Configurations	Cost of Configuration	Reseller's Markup on Purchases of up to \$50,000.00. Straight Shipment Only, No services.
# 3	\$1,219.44	
OptiPlex GX240 Small Minitower; Dell Quote # 67553289		
OptiPlex GX240, P4, 1.7GHz, 256K Cache, Gray Small Minitower Base, Includes PCI Riser (220-5727)		
128MB, NonECC, PC133 SDRAM, 1X128, GX50/150/240 (311-4702)		
Dell Enhanced Quiet Key PS/2 Rubberdome "3 Hot key" Keyboard, Gray, (310-0762)		
Dell P793, Diamondtron, 16.0 Inch Viewable Image Size, Optiplex, Gray (320-4103)		
16MB, ATI, Rage Ultra 128, Video Card, (Full Height), GX240 (320-1732)		
20GB, EIDE, 7200 RPM, ATA/100 Hard Drive, OptiPlex (340-2412)		
3.5 inch, 1.44MB, Floppy Drive OptiPlex (340-2901)		
Windows 2000, SP1, NTFS, CD, English (420-0262)		
Dell PS/2 2-button mouse, OptiPlex, Gray (310-1301)		
Integrated 10/100 3Com Remote Wake-up NIC, OptiPlex (430-4061)		
CD-ROM, EIDE, 48X, OptiPlex (313-4406)		
Integrated Sound Blaster Compatible AC97 Sound, OptiPlex (313-8170)		
Internal Chassis Speaker Option, Optiplex (313-1495)		
OptiPlex Resource CD (313-7168)		
Type 3 Contract - Next Business Day Parts & Labor On-Site Response Initial Year (902-3610)		
Type 3 Contract - Next Business Day Parts & Labor On-Site Response 2YR Extended (902-3612)		
Standard On-Site Installation Declined (900-9987)		
Mouse Pad (310-3559)		
# 4	\$4,109.59	
PowerEdge 2550; Dell Quote # 67553410		
PowerEdge 2550, Pentium III, 933MHz, 256K Cache, Base (220-3488)		
Information, No Second Processor (311-1193)		
256MB SDRAM, 133MHz, 2X128MB DIMMs (311-1501)		
Deluxe, Windows, Keyboard, Gray, Servers (310-3775)		
17in (16.0in VIS) Monitor, Midnight Gray, P793 (320-0091)		
18GB U160M SCSI, 1 in, 10000 RPM Hard Drive, PowerEdge 2550 (340-2333)		
Raid Enabler, PERC3-DI, 128MB, With Documentation, (340-2437)		
1.44MB, 3.5", Floppy Drive, for Dell PowerEdge Servers, (340-5986)		
Windows 2000 Server, 5 Client Access Licenses, English, 4GB Partition (420-0236)		
Logitech System Mouse, Gray, Servers (310-3776)		
Dual On-Board NICs ONLY (430-8991)		
24X IDE Internal CD-ROM, Black, for Dell PowerEdge (313-0317)		
4 Bay Hard Drive Backplane, (1.0 in only), PowerEdge 2550 (311-1296)		
Electronic Documentation on CD (310-0438)		
18GB U160M SCSI, 1 in, 10000 RPM Hard Drive, PowerEdge 2550 (340-2333)		
C3, MR1, ROMB 1, for Dell PowerEdge 2550 (340-2493)		
Rapid Rails for Dell Rack (310-5986)		
Type 1 Contract - Same Day 4-Hour 5x10 Parts & Labor On-Site Response 2YR Extended (902-3722)		
Non GOLD Service Offering (950-4649)		
Type 1 Contract - Same Day 4-Hour 5x10 Parts & Labor On-Site Response Initial Year (902-3350)		
On-Site Installation Declined (900-9997)		
Power Supply, 330W, 2 Units, DOM, Redundant, for Dell Servers, Tied (310-0604)		

Configurations	Cost of Configuration	Reseller's Markup on Purchases of up to \$50,000.00. Straight Shipment Only, No services.
* This posting covers all Dell Branded Equipment. Vendor Markup will correspond with other models within the same line and those of like systems. I.E., Optiplex and Dimension line; Latitude and Inspiron line; etc.		
* Above configurations are samples. The manufacturer of components listed within the configurations, i.e; Intel, 3COM, Microsoft, etc.; are at the discretion of Dell. Other manufacturer components are available upon request or as provided by Dell.		
* Purchases over \$50,000.00 and <u>Any</u> size order that requires Reseller to provide services, markup to be negotiated by Reseller.		
* Quantity purchases requested by Customer, Reseller can negotiate with Dell for better pricing. This will be at Dell's discretion.		

**TEXAS DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
(VENDOR)**

This VOLUME PRICING CONTRACT is entered into as of ~~XX XX, XXXX~~ (Effective Date) between the State of Texas, acting by and through the Department of Information Resources (DIR) with its principal place of business at 300 West 15th Street, Austin, Texas 78701, on behalf of state agencies as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, §61.003) and local governments as defined in §791.003, Texas Government Code, and ~~XXXXXXXXXXXX~~ (Vendor) with its principal place of business at ~~XXXXXXXXXXXX~~.

The parties agree as follows:

I. PURPOSE OF THIS CONTRACT

Vendor shall provide information resources technologies **only** as specified in Contract Posting Document ~~XXX~~, attached as Exhibit "A", to customers in accordance with the terms of this contract. Vendor shall provide information resources technologies only upon the issuance and acceptance by vendor of valid purchase orders. A customer may purchase any quantity of product or service available from vendor at the prices negotiated by the DIR ("DIR Discounted Price"). For large orders, vendor and a customer may negotiate quantity price discounts above the DIR pricing discounts for a purchase order. From time to time, vendor may offer other discounts on particular information resources technologies for qualifying customer (e.g., announced promotion prices, educational discount prices, or similar discount pricing).

Vendor is required to be a Certified Dell Reseller or in the process of being certified.

II. TERM OF CONTRACT

This contract shall begin ~~XXX XX, XXXX~~ and end August 31, 2003 unless extended at the option of DIR for an additional one-year period through August 31, 2004.

III. ORDER OF PRECEDENCE

Each purchase order under this contract that is accepted by vendor will be subject to this contract. Purchase transactions between the parties shall be governed by the terms and conditions of this contract and any exhibits to this contract. In the event of a conflict between a term of this contract (or an exhibit to this contract) or purchase order issued by a customer, the contract term shall control. No additional term and condition of a purchase order issued by a customer can weaken a term or condition of this contract.

IV. DEFINITIONS

- a) "Contract Administrator" refers to the individual appointed by the DIR to administer this contract on behalf of the State of Texas and the authorized customers.

- b) **"Announced Promotion Prices"** are prices offered nationally to specific categories of customer for defined time periods under defined terms and conditions.
- c) **"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only.
- d) **"Large Order Negotiated Price"** means the price negotiated between vendor and a particular customer under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of vendor and the customer. large order negotiated prices shall apply only to those items which meet the applicable additional terms and conditions (e.g., order quantity, time limitation, product configuration) negotiated by the parties.
- e) **"Machine"** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "machine" includes a vendor machine and any non-vendor machine (including other equipment) that vendor may provide to customer.
- f) **"Customer"** means any Texas State agency as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, §61.003) and local governments as defined in §791.003, Texas Government Code
- g) **"Information Resources Technology (Technologies)"** is defined in Texas Government Code §2054.003.
- h) **"Purchase Order"** means an electronic or paper document issued by a customer which directs vendor to deliver information resources technologies pursuant to this contract.
- i) **"Specification"** is a document that provides information specific to an item of information resources technology.
- j) **"Straight Shipment"** means that product is delivered directly to the customer from Dell. Vendor is only required to accept the purchase order, process the order to Dell, and invoice the order to the customer.
- k) **"Services"** means any type of work that a customer may require from vendor for a purchase, above and beyond a straight shipment from Dell. I.E. installation, de-installation, warehousing product, etc.

V. QUANTITY GUARANTEES

This contract is not exclusive. Customer may obtain computer information resources technologies from other sources during the contract term. DIR makes no express or implied warranties whatsoever that any particular number of purchase orders will be issued or that any particular quantity or dollar amount of information resources technologies will be procured.

VI. PAYMENT PROVISIONS

All payments for information resources technologies purchased under this contract and any provision of acceptance of such information resources technologies shall be made to vendor by the customer. Invoices shall be submitted by vendor directly to the customer. Customer will

endeavor to pay within thirty (30) days of receipt all accurate, timely and complete invoices from vendor.

VII. PRICING

- a) The price to the customer under this contract, with the exception of ~~XXXXXXX~~, shall be the lowest price offered by vendor to any governmental entity for the same product or service. Vendor shall immediately pass price reductions received from its suppliers on to the DIR Customers purchasing under the Contract. The Vendor is in violation of the Contract if they are found selling the same product or service at a lower price. The violation may result in the Contract being terminated.
- b) All products which Vendor is authorized by Dell to resell, Dell branded equipment, shall be available to the Customer at Vendor's contracted price from Dell plus the follow fees:
 - 1) an administrative fee to DIR to defray its costs of negotiating, executing and administering this Contract, currently ~~XX~~% of each sale made.
 - 2) a ~~XXX~~% mark-up fee by Vendor on all straight shipments from Dell to Customer for Purchases up to \$50,000.00.
 - 3) For purchases over \$50,000.00 and for any purchase by Customer that requires Vendor to supply services, the mark-up fee by Vendor will be negotiable.
- c) Vendor agrees to maintain DIR product prices in accordance with the terms of this contract. Prices are subject to change without prior notice. Payment under this contract shall not foreclose the right of the customer to recover wrongful payments.
- d) The price to the customer under this contract shall include any shipping and handling fees, or shall be listed separately for the customer. No additional fees shall be charged to the customer for standard shipping and handling. If the customer requests expedited delivery, customer will be responsible for any charges for expedited delivery.

VIII. TERMINATION

The following provisions are applicable in the event this contract is terminated.

a) Termination for Convenience

At any time, either party may terminate this contract, in whole or in part, by giving the other party (30) days written notice.

b) Customer's Rights

In the event the contract expires or is terminated for any reason, a customer shall retain its rights under the purchase order issued with respect to all information resources technologies ordered and accepted prior to the effective termination date.

c) Vendor's Rights

In the event the contract expires or is terminated for any reason, a customer shall pay vendor all amounts due for information resources technologies ordered prior to the effective termination date and ultimately accepted.

IX. ADMINISTRATIVE FEE

The administrative fee shall be included in the charges for the information resources technologies set forth on any order form and/or quoted to customer. This administrative fee shall not be broken out as a separate line item. The vendor's obligation to pay such amounts shall be suspended to the extent that its payment of collection violates any state or federal laws.

Vendor will pay DIR, on a monthly basis, the fee based on a percentage of the dollar value of vendor purchases made by customers pursuant to this contract. Payment is due based on sales, net of returns and credits. Vendor will provide payment to DIR five (5) business days after the end of each month. The administrative fee is currently based on ~~XX~~% of each sale made.

X. PRODUCT AND SERVICE SCHEDULE

Vendor agrees to maintain the DIR pricing in accordance with the following provisions:

- a) The DIR prices for information resources technologies will conform to the price discounts offered by vendor.
- b) Vendor may change the price of any product or service at any time, based upon list price changes, but price discount levels shall remain consistent during the agreed period.
- c) DIR may change its administrative fee upward or downward during the term of this contract upon written notice to vendor.
- d) If vendor is contacted by, or contacts, a Texas State agency, institution of higher education or unit of local government concerning buying information resources technologies that are already available under contract, vendor shall make the potential customer aware of this contract and the ability of the potential customer to buy hereunder.
- e) Vendor may make product model changes, add new products, product upgrades or services at any time and the pricing for the same shall incorporate comparable price discount levels provided herein.
- f) Vendor agrees to delete obsolete and discontinued products from the DIR product list on a timely basis.
- g) Major product model changes shall be incorporated within 30 days after the vendor model change announcement.

XI. QUOTATIONS, SHIPPING AND HANDLING, AND RETURN POLICIES

Vendor will adhere to their then-currently published policies concerning quotations, shipping, and return policies. Policies for customer will not be more restrictive nor more costly than those policies for any other like individual, corporation, partnership, governmental entity, or other legal entity for the same product or service.

XII. YEAR 2000

Information resources technology provided pursuant to this contract shall conform to BSI DISC PD 2000-1:1988.

XIII. IMPRACTICALITY OF PERFORMANCE

A party shall be excused from performance under this contract for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. A customer may terminate a purchase order if it is determined by the customer that vendor will not be able to deliver product or services in a timely manner to meet the business needs of the customer.

XIV. RECORDS AND AUDIT

- a) Vendor shall maintain adequate records to establish compliance with this contract until the later of a period of four years after termination of this contract or until full, final and unappealable resolution of all audit or litigation issues that arise under this contract. Such records shall include documentation of the date each customer placed an order, identification of the ordering customer, the product and quantity ordered, including the name of the product and the publisher or manufacturer of the product, the price quoted to the customer for such order, the customer purchase order number, the order date, ship date, MSRP, shipping address, the invoice sent to the customer relating to the order, the record of customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this contract and such other documentation as DIR may request.
- b) Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this contract to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by vendor without charge. DIR shall provide vendor ten business days' notice prior to inspecting, auditing and/or copying vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the vendor's books and records shall be available to DIR staff and designees as needed to explain the books and records to the extent necessary for the audit or inspection to be performed. Vendor shall provide adequate office space to DIR staff during the performance of an audit.
- c) If any inspection or audit performed hereunder reveals an aggregate overcharge to customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such audit or inspection, including, but not limited to, the salary and associated

overhead of DIR staff performing the audit or inspection, shall be reimbursed to DIR within thirty days from receipt of an invoice from DIR reflecting the cost of the audit or inspection.

- d) In the event of a discrepancy between the amount determined by the Texas Comptroller of Public Accounts as having been paid to vendor on behalf of a customer and the amount vendor calculates DIR's administrative fee provided for such customer, the amount reflected by the Comptroller of Public Accounts shall be presumed correct unless vendor can demonstrate to DIR's satisfaction that vendor's calculation of DIR's administrative fee is correct.

XV. USE OF SUBCONTRACTORS

Vendor may subcontract installation, training, warranty or maintenance services. However, vendor shall remain solely responsible for the performance of its obligations under this contract. All customer payments for information resources technologies shall be made directly to vendor.

A customer may choose to contract for configuration, installation, training, warranty or maintenance services separately through alternate DIR contracts.

XVI. AMENDMENTS

The contract shall be amended only by written instrument executed by the parties.

XVII. SCOPE OF CONTRACT

This contract replaces all of the agreements of the parties concerning the subject matter of this contract, and all prior agreements have been merged into this contract. No prior contract, verbal or otherwise, of the parties or their agents shall be valid or enforceable.

XVIII. INVALID TERM AND CONDITION

If any term or condition of this contract shall be held invalid or unenforceable, the remainder of this contract shall not be affected and shall be valid and enforceable.

XIX. ENFORCEMENT OF CONTRACT

A party's failure to require strict performance of any provision of this contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this contract shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

XX. WEB SITE MAINTENANCE

Vendor agrees to work with the DIR Contract Administrator in keeping updated Vendor information listed on the DIR Web Site.

XXI. EQUAL OPPORTUNITY COMPLIANCE

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by vendor under this contract. If vendor is found to be not in compliance with these requirements during the life of this contract, vendor agrees to take appropriate steps to correct these deficiencies.

XXII. CHANGE IN VENDOR REPRESENTATIVES

Vendor shall appoint a primary representative to work with the contract administrator to maintain, support and market this contract. DIR reserves the right to request a change in vendor's then-current primary representative if the assigned representative is not, in the opinion of the DIR, serving the needs of the State of Texas and the customers adequately.

XXIII. CONFIDENTIALITY

Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will not only comply with the Public Information Act, and also with all opinions of the Texas Attorney Generals' office concerning this Act.

Under the terms of this contract, DIR may provide vendor with information related to DIR customers. Vendor shall comply with all DIR privacy policy guidelines, including, but not limited to, the requirement that vendor shall not re-sell or otherwise distribute or release to any party in any manner DIR customer information.

XXIV. SITE PREPARATION

A customer shall prepare and maintain its site in accordance with written instructions furnished by vendor prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

XXV. CONTRACT ADMINISTRATOR

The DIR shall appoint a contract administrator whose duties shall include but not be limited to the following:

- A. Facilitate dispute resolution between the vendor and customer. Unresolved disputes shall be presented to DIR for resolution.
- B. The administrator shall advise the DIR regarding vendor's performance under the terms and conditions of the contract.

- C. Receive and approve monthly contract utilization reports and the administration fee payments.
- D. Periodically verify the Product prices conform with vendor's volume price guarantees.

XXVI. SURVIVAL

Warranty and service agreements that were entered into between vendor and a customer under the terms and conditions of this contract shall survive the termination of this contract.

XXVII. SUCCESSION

This contract shall be entered into and be binding upon the successors of the parties. DIR must approve assignment of this contract prior to any transfer.

XXVIII. NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To DIR:

Patrick W. Hogan, Director of Business Operations
Department of Information Resources
P.O. Box 13564
Austin, Texas 78711

To Vendor:

Either party may change its representative or address above by written notice:

XXIX. ADMINISTRATION REPORTING AND FEES

Vendor agrees to provide monthly contract utilization reports to the contract administrator in accordance with the following schedule. The reports will be due five business days after the end of each month.

- a) A monthly report shall state the sales under the contract for the period subtotaled by customer name. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated administrative fee.
- b) A detail sales report will be issued monthly that includes no less than each customer, order date, ship date, manufacturer, quantity, customer price, extended price, MSRP, customer purchase order number, shipping address, and other information as required by DIR.

- c) Reports as required by DIR that will reflect the amount of work being subcontracted to historically underutilized businesses, as defined by Texas State law.

All reports are to be submitted electronically as defined by DIR.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the contract or termination of the contract for cause. Vendor's liability for any breach of this Section shall not under any circumstances exceed the amount of administrative fees owed to DIR by vendor.

XXX. VENDOR CERTIFICATIONS

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this contract; and (v) during the term of this contract, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

XXXI. DIR LOGO

Vendor may use the DIR logo in the promotion of this contract to customers with the following stipulations:

- a) The logo may not be modified in any way;
- b) When displayed, the size of the DIR logo must be equal to or smaller than the vendor logo;
- c) The sole use of the DIR logo will be to communicate the availability of information resources technologies available under this contract to customers; and
- d) Any other use of the DIR logo requires prior written permission from DIR.

XXXII. TECHNOLOGY ACCESS, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE

The vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the vendor represents and warrants to DIR and each customer purchasing products under this contract that the technology provided hereunder is capable, either by virtue of features

included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

XXXIII. COMMODITY SOFTWARE

Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, vendor agrees to coordinate all commodity software sales made coincident to this agreement through existing DIR contracts if available. Vendor represents that it has (i) negotiated a favorable price with DIR for all commodity software licensed under this Contract based on the aggregate volume of purchases expected to be made by the State of Texas; and (ii) it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to other state agencies within the State of Texas outside of this Contract unless DIR provides notification that DIR has granted a waiver to that state agency to purchase the commodity software outside of this Contract. This section does not apply to institutions of higher education.

XXXIV. DISPUTE RESOLUTION

For disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used.

This contract shall be governed by the laws of the State of Texas. Venue for any dispute is in the District Court of Travis County, Texas.

XXXV. BUY TEXAS

With respect to all services, if any, purchased under this contract, vendor represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials. When requested by DIR, vendor shall timely provide documentation satisfactory to DIR evidencing the use of Texas products and materials for providing any services provided under this contract. If vendor is unable to find Texas products and materials to use in providing any services provided hereunder, Upon DIR's request, vendor shall provide documentation satisfactory to DIR evidencing vendor's good faith efforts to purchase and use Texas products and materials in providing services hereunder.

XXXVI. TRAINING AND TRADE SHOW PARTICIPATION

The vendor may be required to provide product overview training to DIR at no cost. The training will be held within the Austin area at times mutually acceptable to DIR and vendor.

Vendor understands and agrees that it must participate fully by providing a manned booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Vendor's expense. Vendor agrees to display the DIR logo at all trade shows directed toward entities that qualify as DIR Customers.

XXXVII. ABILITY TO CONDUCT BUSINESS IN TEXAS

The vendor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.

Vendor acknowledges and agrees that, to the extent vendor owes any debt or delinquent taxes to the State of Texas, in accordance with §403.055(h), Texas Government Code, any payments vendor is owed under this contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes vendor owes the State of Texas until the debt or delinquent taxes are paid in full.

Vendor is a "Qualified Information Systems vendor" as defined in §2157.001, Texas Government Code. All information resources technologies offered to customer under this contract are listed in vendor's catalogue on file with the General Services Commission.

XXXVIII. BINDING CONTRACT

This contract has been duly authorized, executed and delivered by vendor and constitutes the valid, legal and binding agreement of vendor, enforceable in accordance with its terms.

XXXIX. SUIT OR PENDING PROCEEDINGS

To the best of the vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the vendor, which if determined adversely to the vendor will have a material adverse effect on the ability of the vendor to fulfill its obligations under the contract.

XL. SALES OF PRODUCTS

Acceptance of the contract by DIR and vendor does not guarantee a sale of any product or service provided by the vendor. DIR is prevented by law from selling information resources technologies to other than governmental entities as defined in Texas Government Code, §2251.001 and Texas Education Code, §61.003.

IN WITNESS WHEREOF, this contract has been executed by the duly authorized representatives of the parties.

Vendor:

By: _____

Name: _____

Title: _____

**THE STATE OF TEXAS, acting by and
through the DEPARTMENT OF
INFORMATION RESOURCES**

By: _____

Name: Patrick W. Hogan

Title: Director of Business Operations

Legal: _____



Department of Information Resources

HUB SUBCONTRACTING PLAN (HSP)

Policy on Utilization of Historically Underutilized Businesses (HUBs)

In accordance with the Texas Government Code, Sections 2161.181-182 and section 111.11 of the Texas Administrative Code (TAC), state agencies shall make a good faith effort to utilize Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services and commodities contracts. The General Services Commission's (GSC) HUB Rules, 1 TAC 111.11-111.28 encourages the use of HUBs by implementing these policies through race-ethnic-and gender-neutral means.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study:

- (1) 11.9% for heavy construction other than building contracts;
- (2) 26.1% for all building construction, including general contractors and operative builders contracts;
- (3) 57.2% for all special trade construction contracts;
- (4) 20% for professional services contracts;
- (5) 33% for all other services contracts; and
- (6) 12.6% for commodities contracts.

Each state agency shall make a good faith effort to meet or exceed these goals and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year. It is the policy of the **Department of Information Resources** to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F and Commission HUB Rules, 1 TAC Section 111.14.

HUB SUBCONTRACTING PLAN (HSP) PROCEDURES

The following procedures are specified pursuant to the General Services Commission's (GSC) HUB Rules, 1, TAC, Section 111.13 and 111.14:

- a. **Department of Information Resources** entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine if it is probable for subcontracting opportunities under the contract.
- b. **If subcontracting opportunities are probable the Department of Information Resources will state such probability in its bids, proposals, offers, or other applicable expression of interest and require the submission of a HSP. The HSP, acceptable to the agency, will be a provision of the contract. The agency will identify the potential subcontracting opportunities and include a list of vendors from the Centralized Master Bidders List (CMBL) that may perform the contract opportunities.**



1. When Department of Information Resources has determined that subcontracting opportunities are probable, the Department of Information Resources in connection with it bids, proposals, offers, or other applicable expression of interest, will include: (a) Letter of transmittal (HSP-LTR1) attesting that the contractor/vendor has read and understands the Policy on Historically Underutilized Businesses (HUBs); (b) The tabulation of Annual Procurement Utilization Goals (HSP-GOALS); (c) Historically Underutilized Business Letter of Intent (HSP-HUB-LOI), identifying the HUBs and/or potential contractor/vendors that will be utilized for subcontracting opportunities, the expected percentage of work to be subcontracted, and the approximate dollar value of that percentage of work; (d) Determination of Good Faith Effort (HSP-DGFE Parts 1 and 2), explaining in what ways the potential contractor/vendor's made a good faith effort in the development of the HUB Subcontracting Plan. (See Attachments A, B, C, D, and E).
2. When Department of Information Resources has determined that subcontracting opportunities are probable, but the potential contractor/vendor can perform and intends to complete all the subcontracting opportunities identified by the agency with its employees and resources without any subcontractors, the HSP shall include: (a) Letter of transmittal (HSP-LTR2) attesting that the contractor/vendor has read and understands the Policy on Historically Underutilized Businesses (HUBs); (b) The tabulation of Annual Procurement Utilization Goals (HSP-GOALS); and (c) Statement of Intent (HSP-SOI), attesting that the potential contractor/vendor shall perform the subcontracting opportunities identified by the agency, with its own employees and resources (See Attachments B, F and G).

Note: If the potential contractor/vendor selected and decides after the award to subcontract any part of the contract after the award, the contractor/vendor must notify the Department of Information Resources. The contractor/vendor must comply with the good faith effort requirements relating to developing and submitting a subcontracting plan before any modifications or performance in the awarded contract involving subcontracting can be authorized by the Department of Information Resources.

- c. Accordingly, a HSP is required as part of your bids, proposals, offers, or other applicable expression of interest. Responses that do not include the HSP or if the agency determines that the HSP was not developed in good faith, shall be rejected as a material failure to comply with the advertised specifications.
- d. No changes shall be made to an accepted subcontracting plan prior to its incorporation into the contract. State agencies shall review the supporting documentation submitted by the potential contractor/vendor to determine if a good faith effort has been made in accordance with the Department of Information Resources bid specifications.
- e. Department of Information Resources shall require a potential contractor/vendor to state whether it is a Texas certified HUB.
- f. Potential contractors/vendors shall follow, but are not limited to, procedures listed below when developing a HUB subcontracting plan.

- (1) Divide the contract work into reasonable lots to the extent consistent with prudent industry practice.



- (2) Notify HUBs of the work that the contractor/vendor intends to subcontract. The preferable method of notification shall be in writing. The notice shall, in all instances, include the scope of the work, information regarding the location to review plans and specifications, information about bonding and insurance requirements, and identify a contact person. The notice shall be provided to potential HUB subcontractors prior to submission of the contractor's/vendor's bid. The potential contractor/vendor shall provide potential HUB subcontractors reasonable time to respond to the potential contractor's/vendor's notice. "Reasonable time to respond" in this context is no less than five working days from receipt of notice, unless circumstances require a different time period, which is determined by the agency and documented in the contract file. The potential contractor/vendor shall effectively use the GSC's Centralized Master Bidders List, the HUB Directory, Internet resources, and other directories as identified by the GSC or **Department of Information Resources** when searching for HUB subcontractors. Contractors/Vendors shall effectively use the services of minority, women, and community organizations contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in identifying HUBs able to perform all or select elements of the HUB subcontracting plan. The potential contractor/vendor shall provide the notice described in this subsection to three or more HUBs that perform the type of work required. The potential contractor/vendor shall provide official written documentation (i.e. phone logs, fax transmittals, etc.) to demonstrate compliance with the notice required in this subsection. **(Form HUB-S – Part 2) (See Attachment E).**

NOTE: A random reference list of Texas certified HUBs and contractors that may be used to performed the subcontracting opportunities has been attached to assist potential contractor/vendors in achieving the program goal. A complete list of all GSC certified HUBs may be electronically accessed through the Internet. The GSC information server is available through the Internet based World-Wide-Web. Although there are alternatives to connect to this data, the preferred method is through the Internet using a Web Browser (like Netscape, Mosaic, etc.). Using a Web Browser, please connect to <http://www.gsc.state.tx.us>.

- (3) Provide written justification of the selection process, if a non HUB subcontractor is selected through means other than competitive bidding, or a HUB bid is the best value responsive bidder to a competitive bid invitation, but is not selected.
- (4) Advertise HUB subcontracting opportunities in general circulation, trade association, and/or minority/woman focus media concerning subcontracting opportunities.
- (5) Encourage a selected noncertified minority or woman- owned business subcontractor to apply for certification by the commission in accordance with the procedures set forth in §111.17 of this title (relating to Certification Process).



- g. If the contract is a lease contract, the lessor shall comply with the requirements of this section from and after the occupancy date provided in the lease, or such other time as may be specified in the invitation for bid for the lease contract.
- h. In making a determination whether a good faith effort has been made in the development of the required HUB subcontracting plan, a state agency shall require the potential contractor/vendor to submit supporting documentation explaining in what ways the potential contractor/vendor has made a good faith effort according to each criterion listed above. The documentation shall include at least the following (Form DGFE – Part 1) (See Attachment D – Pages 1 and 2):
 - (1) Whether the potential contractor/vendor divided the contract work into reasonable portions in accordance with prudent industry practices.
 - (2) Whether the potential contractor/vendor sent notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs allowing reasonable time for HUBs to participate effectively.
 - (3) Whether the potential contractor/vendor negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who were also the best value responsive bidder.
 - (4) Whether the potential contractor/vendor documented reasons for rejection or met with the rejected HUB to discuss the rejection.
 - (5) Whether the potential contractor/vendor advertised in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities.
 - (6) Whether the potential contractor/vendor assisted non-certified HUBs to become certified.
- i. The HUB subcontracting plan and supporting documentation shall be reviewed and evaluated by state agencies to determine if a good faith effort has been made in accordance with GSC's rules and bid specifications prior to contract award. If accepted, the HUB Subcontracting Plan shall become a provision of the Department of Information Resources contract. No changes may be made in an accepted HUB Subcontracting Plan prior to incorporation in the contract.
- j. If the agency determines that a submitted HUB subcontracting plan was not developed in good faith, the agency shall treat the lack of good faith as a material failure to comply with advertised specifications, and the subject bid or other response shall be rejected. The reasons for rejection shall be recorded in the procurement file.
- k. If at any time during the term of the contract, a contractor/vendor desires to make changes to the approved HUB Subcontracting Plan, such proposed changes must be received for prior review and approval by the Department of Information Resources before changes will be effective under the contract. The potential contractor/vendor must comply with provisions of 111.14 (b), relating to



development and evaluation of HUB Subcontracting Plans, in order to substitute work or a subcontractor prior to any alternative under the subcontracting plan. The **Department of Information Resources** shall approve changes by contract amendments. The reasons for amendments shall be recorded in the procurement file.

- I. If a potential contractor/vendor has determined that it can perform all the subcontracting opportunities identified by **Department of Information Resources**, a statement of the potential contractor's/vendor's intent to complete the work with its employees and resources without any subcontracting will be submitted with the potential contractor's/vendor's bid, proposal, offer, or other expression of interest (**See Attachments F, B & G**). If the potential contractor/vendor is selected and decides to subcontract any part of the contract after the award, as a provision of the contract, the contractor/vendor must comply with provisions of this section relating to developing and submitting a subcontracting plan prior to any modifications or performance in the awarded contract involving subcontracting can be authorized by the state agency. If the selected contractor/vendor subcontracts any of the work without prior authorization and without complying with 1 TAC Section 111.14, the contractor/vendor is deemed to have breached the contract and to be subject to any remedial actions provided by Texas Government Code, Chapter 2161, and 1 TAC §111.14. **Department of Information Resources** may report non-performance relative to its contracts to the commission in accordance with 1 TAC Chapter 113, Subchapter F (relating to the Vendor Performance and Debarment Program).
- m. The contractor/vendor shall maintain business records documenting its compliance with the HUB Subcontracting Plan and shall submit a compliance report to the contracting **Department of Information Resources** periodically and in the format required by the contract documents.
- n. During the term of the contract, the **Department of Information Resources** shall determine whether the value of the subcontracts to HUBs meets or exceeds the HUB subcontracting provisions specified in the contract.
- o. **Department of Information Resources** requires a contractor/vendor to whom a contract has been awarded to report to the agency the identity and the amount paid to its subcontractors (**See Attachments H and I**). If the contractor/vendor is fulfilling or exceeding the plan, the **Department of Information Resources** shall maintain documentation of the contractor's/vendor's efforts in the contract file. If

the contractor/vendor fails to fulfill the HUB Subcontracting Plan specified in the contract, the **Department of Information Resources** shall notify the contractor of any deficiencies. The **Department of Information Resources** shall give the contractor/vendor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB Subcontracting Plan should not be attributed to a lack of good faith effort by the contractor/vendor. In determining whether the contractor/vendor made the required good faith effort, the **Department of Information Resources** may not consider the success or failure of the contractor/vendor to subcontract with HUBs in any specific quantity. The



Department of Information Resources determination is restricted to considering factors indicating good faith including, but not limited to, the following:

- (1) Whether the contractor gave timely notice to the subcontractor regarding the time and place of the subcontracted work.
 - (2) Whether the contractor facilitated access to the work site provided electrical power and other necessary utilities.
 - (3) Whether documentation or information was provided that included potential changes in the scope of contract work.
- p. If a determination is made that the contractor/vendor failed to implement the HUB Subcontracting Plan in good faith, the **Department of Information Resources**, in addition to any other remedies, may report nonperformance to the commission in accordance with 1 TAC, Chapter 113, Subchapter F (relating to Vendor Performance and Debarment Program).
- q. If subcontracting opportunities are not probable, the **Department of Information Resources** bids, proposals, offers, or other applicable expression of interest will include a "Declaration of Subcontracting Opportunities" attesting that it has determined that subcontracting opportunities are not available under the contract (See Attachment K).

Reporting Requirements

Each contractor/vendors that enters into a contract shall report HUB subcontracting payments to the **Department of Information Resources**. The report will include the volume of work performed under the contract, the portion of the work that was performed with its employees/resources, Non-HUB contractors/vendors and other HUB contractors/vendors (See Attachments H, I & J). Attachment I should be used by the contractor/vendor to report to the agency the identification of its subcontractors and the amount paid to all subcontractors, including HUBs. Attachment J should be used by the contractor/vendor to affirm that all subcontracting opportunities are performed with the firm's employees and resources, and without any subcontractors.

The **Department of Information Resources** may request payment documentation in accordance with the GSC HUB Rules, and the HSP that confirms the performance of the contractor/vendor. During the course of the contract the Department of Information Resources shall discuss the performance of the contractor/vendor and document the contractor/vendor's performance in the contract file.

Note: When the prime contractor/vendor is a HUB, it must perform at least 25% of the total value of the contract with its own or leased employees as defined by the Internal Revenue Service in order for the agency to receive 100% HUB credit for the entire contract. The HUB prime contractor/vendor may subcontract up to 75% of the contract with HUBs or non-HUB subcontractors.



If a HUB prime contractor's/vendor's HSP identifies that it is planning to perform less than 25% of the total value of contract with its employees, the HUB contractor/vendor must report to the agency the value of the contract that was actually performed by the HUB prime contractor/vendor and its HUB subcontractors. If the HUB contractor/vendor does not report the HSP this would cause double reporting of HUB dollars.

The Department of Information Resources shall audit the contractor's/vendor's compliance with the HUB Subcontracting Plan. If the contractor is found deficient, the **Department of Information Resources** shall give the contractor/vendor an opportunity to submit documentation and explain to the state agency why the failure to fulfill the HUB subcontracting plan should not be attributed to a lack of good faith effort by the contractor/vendor. Any deficiencies will be identified by the Department of Information Resources and must be rectified prior to the next reporting period by the contractor/vendor.

Note: This policy should be included in all contracts with an expected value of \$100,000 or more.



Attachment A

(BUSINESS LETTERHEAD)

Patrick W. Hogan
Director, Business Operations
Department of Information Resources
300 West 15th Street
Suite 1300
Austin, Texas 78701

Dear _____:

I am pleased to forward this HUB Subcontracting Plan as an integral part of our bid (proposal, offer, or other expression of interest) in connection with your invitation for bids (request for proposals, etc.) #_____.

I have read and understand **Department of Information Resources** Policy on Utilization of Historically Underutilized Businesses (HUBs). (Number) HUB-LOI(s) is (are) enclosed totaling \$_____. That amount is _____ percent of our total bid amount.

Sincerely,

Signature

Print Name

Title



Attachment B

HUB SUBCONTRACTING PLAN

STATE OF TEXAS

ANNUAL PROCUREMENT UTILIZATION GOALS

1 Texas Administrative Code §111.13

11.9% for heavy construction other than building contracts;
26.1% for all building construction, including general contractors
and operative builders contracts;
57.2% for all special trade construction contracts;
20.0% for professional services contracts;
33.0% for all other services contracts; and
12.6% for commodities contracts.



Attachment C

**HUB SUBCONTRACTING PLAN
HISTORICALLY UNDERUTILIZED BUSINESS
LETTER OF INTENT (HUB-LOI)**

**(HUB-LOI IS USED BY POTENTIAL CONTRACTOR/VENDOR TO IDENTIFY
SUBCONTRACTORS SELECTED FOR WORK ON THE CONTRACT)**

Bidder: _____ Vendor Identification Number: _____

Address: _____

Phone: ____ - ____ - ____ Bid Number: _____ Contract Amount: _____

Description of commodities/specifications: _____

Duration of Contract: _____

Name of Subcontractor/Supplier: _____

Address: _____

Phone: ____ - ____ - ____ Is the subcontractor a certified HUB? ____ Yes ____ No

If yes, enter the GSC Certificate (VID) number: _____

Dollar amount of contract with subcontractor/supplier: \$ _____

Percentage amount of contract with subcontractor/supplier: % _____

Description of materials/services performed under agreement with the subcontractor for amount indicated above:

PLEASE SUBMIT A SEPARATE FORM FOR EACH SUBCONTRACTOR/SUPPLIER.



Attachment D

**HUB SUBCONTRACTING PLAN
Historically Underutilized Business (HUB)**

DETERMINATION OF GOOD FAITH EFFORT (DGFE), PART 1, PAGE 1

(This form must be completed and submitted as part of the HUB Subcontracting Plan)

Contractor/Vendor Name: _____ Vendor Identification Number: _____

Address: _____

Phone: ____ - ____ - ____ Bid Number: _____ Contract Amount: _____

In determining whether a good faith effort has been made in development of the HUB Subcontracting Plan, a state agency shall require the potential contractor/vendor to submit supporting documentation explaining in what ways the potential contractor/vendor has made a good faith effort. Please answer the questions below. Provide necessary documentation to support your answers. Use continuation sheets as required.

1. Did your company divide the contract work into reasonable portions in accordance with prudent industry practices?

2. Did your company send notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs allowing reasonable time for HUBs to participate effectively (include Attachment E)?

3. Did your company negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were the best value responsive bidder?

(continued on next page)



Attachment D (cont'd)

**HUB SUBCONTRACTING PLAN
Historically Underutilized Business (HUB)**

DETERMINATION OF GOOD FAITH EFFORT (DGFE), PART 1, PAGE 2

(This form must be completed and submitted as part of the HUB Subcontracting Plan)

Contractor/Vendor Name: _____ BID Number _____

4. Did your company document reasons for rejection or meet with rejected HUBs to discuss the rejection?

5. Did your company advertise in general circulation, trade association, and minority/women focus media concerning subcontracting opportunities?

6. Did your company assist non-certified HUBs to become certified?

NOTE: The contracting agency will review the supporting documentation submitted by the potential contractor/vendor to determine if a good faith effort was made in accordance with applicable 1 TAC rules and the contract specifications. If it is determined that a good faith effort was not made, the bid or other response shall be rejected as a material failure to comply with advertised specifications. The reasons for rejection will be recorded in the project file.



Attachment E

HUB SUBCONTRACTING PLAN Historically Underutilized Business (HUB)

SOLICITATION (HUB-S)

DETERMINATION OF GOOD FAITH EFFORT (DGFE), PART 2, PAGE 1

(This form must be completed and submitted as part of the HUB Subcontracting Plan for Determination of Good Faith Effort)

Contractor/Vendor Name: _____ Vendor Identification Number: _____
Address: _____
Phone: _____ - _____ - _____ Bid Number: _____ Contact Name: _____

Are you certified as a Texas HUB? ___ Yes ___ No;
If Yes, please provide your GSC VID/Certificate Number above.

Specific Subcontract Solicited: _____

Contractor's Estimate of Approximate Dollar Value of Subcontract Advertised: _____

*** Identify each HUB to which a notice of solicitation was given. Attach a copy of each solicitation letter.**

1. Name of HUB Subcontractor/Supplier: _____
Address: _____
Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please complete the following information:

<input type="checkbox"/> Black American	<input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/> Native American	<input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/> Woman	
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/> Asian Pacific American	<input type="checkbox"/> Male <input type="checkbox"/> Female

Date certification packet delivered to HUB subcontractor _____

2. Name of HUB Subcontractor/Supplier: _____
Address: _____
Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please complete the following information:

<input type="checkbox"/> Black American	<input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/> Native American	<input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/> Woman	
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Male <input type="checkbox"/> Female
<input type="checkbox"/> Asian Pacific American	<input type="checkbox"/> Male <input type="checkbox"/> Female

Date certification packet delivered to HUB subcontractor _____



Attachment E (cont'd)

**HUB SUBCONTRACTING PLAN
Historically Underutilized Business (HUB)**

SOLICITATION (HUB-S)

DETERMINATION OF GOOD FAITH EFFORT (DGFE), PART 2, PAGE 2

(This form must be completed and submitted as part of the HUB Subcontracting Plan for
Determination of Good Faith Effort)

Contractor/Vendor Name: _____ Vendor Identification Number: _____

3. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please
complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____

4. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please
complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____

5. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please
complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____



Attachment E (cont'd)

**HUB SUBCONTRACTING PLAN
Historically Underutilized Business (HUB)**

SOLICITATION (HUB-S)

DETERMINATION OF GOOD FAITH EFFORT (DGFE), PART 2, PAGE 3

**(This form must be completed and submitted as part of the HUB Subcontracting Plan for
Determination of Good Faith Effort)**

Contractor/Vendor Name: _____ Vendor Identification Number: _____

6. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please
complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____

7. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please
complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____

8. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please
complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____



Attachment E (cont'd)

**HUB SUBCONTRACTING PLAN
Historically Underutilized Business (HUB)
SOLICITATION (HUB-S)**

DETERMINATION OF GOOD FAITH EFFORT (DGFE), PART 2, PAGE 4

(This form must be completed and submitted as part of the HUB Subcontracting Plan for Determination of Good Faith Effort)

Contractor/Vendor Name: _____ Vendor Identification Number: _____

9. Name of HUB Subcontractor/Supplier: _____
Address: _____
Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____

10. Name of HUB Subcontractor/Supplier: _____
Address: _____
Phone: _____ - _____ - _____ Owner(s): _____

If GSC certified, enter Vendor Identification Number: _____ If not GSC certified, please complete the following information:

- | | |
|---|---|
| <input type="checkbox"/> Black American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Native American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Woman | |
| <input type="checkbox"/> Hispanic American | <input type="checkbox"/> Male <input type="checkbox"/> Female |
| <input type="checkbox"/> Asian Pacific American | <input type="checkbox"/> Male <input type="checkbox"/> Female |

Date certification packet delivered to HUB subcontractor _____



Attachment F

(BUSINESS LETTERHEAD)

(Name of Official)
(CONTRACTING AGENCY'S NAME) (Office)
(Address Line)
(Address Line)

Dear _____:

I am pleased to forward this HUB Subcontracting Plan as an integral part of our bid (proposal, offer, or other expression of interest) in connection with your invitation for bids (request for proposals, etc.) #_____.

I have read and understand **(CONTRACTING AGENCY'S NAME)** Policy on Utilization of Historically Underutilized Businesses (HUBs). The enclosed HUB-SOI expresses our intent to perform and/or supply all contracted goods or services with our employees and resources.

Sincerely,

(Signature)
(Printed Name)
(Printed Title)



Attachment G

HUB SUBCONTRACTING PLAN Historically Underutilized Business STATEMENT OF INTENT (SOI)

(Must be completed and submitted when the contractor/vendor plans to complete all work with its employees and resources.)

If the potential contractor/vendor can perform the subcontracting opportunities identified by **Department of Information Resources**, with its employees and resources, the HUB Subcontracting Plan must express the potential contractor/vendor's intent to complete the work with its employees and resources. The potential contractor/vendor must attest to this fact by completion of the Statement of Intent below.

By completing the following Statement of Intent, the potential contractor's/vendor's HUB Subcontracting Plan may be considered responsive, qualified and/or valid:

STATEMENT OF INTENT:

I _____, an authorized representative of contractor/vendor have reviewed the purchase solicitations, and have determined that the entire work of the contract will be completed with contractor/vendor own employees and internal resources without subcontracting any portion of the contract.

I hereby agree to act in good faith and understand that if my company is awarded the contract, that as a provision of this contract, I agree to complete all subcontracting opportunities, identified by the agency, with my company's resources and to report information to **Department of Information Resources** regarding my performance of the contract as specified.

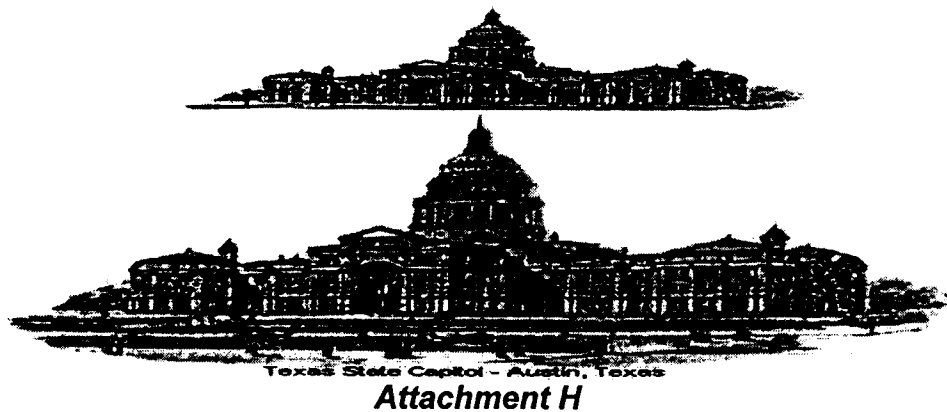
If circumstances necessitate the use of any subcontractors, I agree to seek the timely authorization by the contracting agency and adhere to the provisions of 1 TAC, Section 111.14 (relating to the submission of HUB Subcontracting Plan documents). I also agree and understand that if I fail to comply with this Statement of Intent, I will be in breach of the performance of the contract.

Printed Name of Contractor/Vendor

Date: _____

Signature of Contractor/Vendor

If the selected contractor/vendor decides to subcontract any part of the contract after the award, as a provision of the contract, the contractor/vendor must seek authorization and comply with provisions of 1 TAC, Section 111.14, prior to any modifications or performance in the awarded contract involving subcontracting. If the contractor/vendor subcontracts any of the work without prior authorization and without complying with contract specifications or HUB Subcontracting Plan, the contractor/vendor is deemed to have breached the contract. The contractor/vendor also is subjected to any other remedial actions provided by Chapter 2161 of the Texas Government Code and 1 TAC, Section 111.14. **Department of Information Resources** also may report non-performance to the GSC in accordance with the GSC's vendor Performance and Debarment Program.



Department of Information Resources

HUB SUBCONTRACTING PLAN

DOCUMENTS TO BE UTILIZED AFTER

THE AWARD OF A CONTRACT

GOOD FAITH EFFORT COMPLIANCE

On a monthly basis state agencies shall require a contractor/vendor to whom a state agency has awarded a contract to report to the agency the identity and amount paid to each historically underutilized business to whom the contractor/vendor has awarded a subcontract for the purchase of supplies, materials and equipment, provided that payment was made to a historically underutilized business in the month to be reported. After an award is made, the contractor/vendor will provide the following documents to the contracting agency:

- (1) Historically Underutilized Business Progress Assessment Report (HUB-PAR), documentation of work subcontracted with HUBs and Non-HUBs in accordance with the HUB Subcontracting Plan. Identify HUBs by indicating Yes or No and include the GSC Certificate VID number.
- (2) No subcontracting Progress Affidavit (NON-SUB-AFF) affirms that NO subcontractors have been used on the contract in accordance with the HUB Subcontracting Plan. If contractors have been used, the contractor/vendor should identify all subcontractors used in the contract.

Attachment I



**PRIME CONTRACTOR
PROGRESS ASSESSMENT REPORT (NON-HUB-PAR)
DOCUMENTATION OF WORK SUBCONTRACTED WITH HUBs**

Date of Award _____ Contract/Requisition Number _____ Object Code (agency use): _____

Contractor Name _____

Contractor Vendor Identification Number (VID Number) _____

Total Contract Amount Paid this Period to Contractor _____

Document HUB/and NON-HUB Subcontractor Information, as applicable below:

Subcontractor/Supplier Name(s)	VID or GSC Certificate Number for Subcontractor	HUB Certified YES/NO	Total Contract \$ Amount from Letter of Intent with Subcontractor	Total \$ Amount Paid This Period to Subcontractor	Total Contract \$ Amount Paid to Date to Subcontractor	(u
TOTAL REPORTED			\$	\$	\$	

Form to be reported monthly or quarterly according to the dates below to the Contracting Agency, Procurement Team. Please identify the month or quarter being reported:

Signature: _____ **Title:** _____

Date: _____ **Month or Quarter Included Deadline Identify**
Month/Quarter

First (Sep., Oct., Nov.) _____
 Second (Dec., Jan., Feb.) _____
 Third (Mar., Apr., May) _____
 Fourth (Jun., Jul., Aug.) _____



Attachment J

**HUB SUBCONTRACTING PLAN
Historically Underutilized Business**

Non-Subcontractors Affidavit (NON-SUB-AFF)

(Document completed as a provision of the contract after the contract has been awarded to be compliant with the HUB Subcontracting Plan)

In accordance with the HUB Subcontracting Plan, I _____, an authorized representative of _____ company certify that during this reporting period, NO subcontractors have been used on this contract.

Printed Name of Contractor/Vendor

Signature of Contractor/Vendor

Subscribed and sworn before me, the undersigned notary public, on this ____ day of _____, (yr.) _____.

(Notary Public Seal)

Notary Public: _____

My commission expires: _____



Attachment K

HUB SUBCONTRACTING PLAN Historically Underutilized Business

DECLARATION OF SUBCONTRACTING OPPORTUNITIES

(Must be completed when the contracting agency determines no subcontracting opportunities are probable.)

In accordance with the Texas Government Code, Chapter 2161, Subchapter F, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract.

State agencies should use the steps outlined in the HUB Rules 1, TAC 111.14(a) in making the determination of whether subcontracting opportunities are probable under the contract: **If subcontracting opportunities are not probable, the agency's bids, proposals, offers, or other applicable expression of interest will include a "Declaration of Subcontracting Opportunities" attesting that it has determined that subcontracting opportunities are not available under the contract.**

I, the undersigned authorized representative Of The General Services Commission have reviewed this solicitation, complied with the steps according to the HUB Rules and have determined to the best of my knowledge and experience that subcontracting opportunities are not probable under this contract. The reasons for this determination are attached to the contract solicitation and documented in the contract file.

Printed Name of Contract Administrator/Official

Signature of Contract Administrator/Official

Date: _____

Signature of HUB Coordinator (if applicable)

Date: _____